

Message Text

PAGE 01 STATE 237418

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TO AMEMBASSY DACCA PRIORITY

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E.O. 11652:N/A

TAGS: EFIN:BG

SUBJECT: OPIC INVESTMENT INCENTIVE AGREEMENT

REF DACCA 5209

FOLLOWING IS TEXT OF OPIC INVESTMENT INCENTIVE AGREEMENT

EXCELLENCY:

I HAVE THE HONOR TO REFER TO CONVERSATIONS WHICH HAVE RECENTLY TAKEN PLACE BETWEEN REPRESENTATIVES OF OUR TWO GOVERNMENTS RELATING TO INVESTMENTS IN BANGLADESH WHICH PROMOTE THE DEVELOPMENT OF THE CONOMIC RESOURCES AND PRODUCTIVE CAPACITIES OF BANGLADESH AND TO INSURANCE AND GUARANTIES OF SUCH INVESTMENTS ISSUED AS AN INCENTIVE BY THE GOVERNMENT OF THE UNITED STATES OF AMERICA. I ALSO HAVE THE HONOR TO CONFIRM THE FOLLOWING UNDERSTANDINGS REACHED AS RESULT OF THOSE CONVERSATIONS:

UNCLASSIFIED

PAGE 02 STATE 237418

1. WHEN AN INVESTOR PROPOSES TO INVEST IN A PROJECT OR ACTIVITY WITHIN BANGLADESH, WITH THE ASSISTANCE OF INSURANCE OR GUARANTIES (HEREINAFTER REFERRED TO AS "COVERAGE") ISSUED PURSUANT TO THIS AGREEMENT BY THE

GOVERNMENT OF THE UNITED STATES OF AMERICA, THE GOVERNMENT OF THE UNITED STATES OF AMERICA (THE ISSUING GOVERNMENT) AND THE GOVERNMENT OF BANGLADESH (THE HOST GOVERNMENT) SHALL, UPON THE REQUEST OF EITHER, CONSULT RESPECTING THE NATURE OF THE PROJECT OR ACTIVITY.

2. THE PROCEDURES SET FORTH IN THIS AGREEMENT SHALL APPLY WITH RESPECT TO COVERAGE OF INVESTMENTS IN PROJECTS OR ACTIVITIES HEREAFTER APPROVED BY THE HOST GOVERNMENT AND OF INVESTMENTS IN BANGLADESH FOR WHICH COVERAGE HAS HERETOFORE BEEN ISSUED BY THE ISSUING GOVERNMENT PURSUANT TO PERTINENT INTERGOVERNMENTAL AGREEMENTS THEN IN FORCE.

3. IF THE ISSUING GOVERNMENT MAKES PAYMENT TO ANY INVESTOR UNDER COVERAGE REFERRED TO IN PARAGRAPH 2 OF THIS AGREEMENT, THE HOST GOVERNMENT SHALL, SUBJECT TO THE PROVISIONS OF PARAGRAPH 4, RECOGNIZE THE TRANSFER TO THE ISSUING GOVERNMENT OF ANY CURRENCY, CREDITS, ASSETS, OR INVESTMENT ON ACCOUNT OF WHICH PAYMENT UNDER SUCH COVERAGE IS MADE AS WELL AS THE SUCCESSION OF THE ISSUING GOVERNMENT TO ANY RIGHT, TITLE, CLAIM, PRIVILEGE, OR CAUSE OF ACTION EXISTING, OR WHICH MAY ARISE, IN CONNECTION THEREWITH. THE ISSUING GOVERNMENT SHALL ASSERT NO GREATER RIGHTS THAN THOSE OF THE TRANSFERRING INVESTOR WITH RESPECT TO ANY INTERESTS TRANSFERRED OR SUCCEEDED TO UNDER THIS PARAGRAPH. THE ISSUING GOVERNMENT DOES, HOWEVER, RESERVE ITS RIGHTS TO ASSERT A CLAIM IN ITS SOVEREIGN CAPACITY UNDER INTERNATIONAL LAW.

4. TO THE EXTENT THAT THE LAWS OF THE HOST GOVERNMENT PARTIALLY OR WHOLLY INVALIDATE OR PROHIBIT THE ACQUISITION FROM A COVERED INVESTOR OF ANY INTERESTS IN ANY PROPERTY WITHIN ITS TERRITORY BY THE ISSUING GOVERNMENT, THE HOST GOVERNMENT SHALL PERMIT SUCH INVESTOR AND THE ISSUING GOVERNMENT TO MAKE APPROPRIATE ARRANGEMENTS PURSUANT TO WHICH SUCH INTERESTS ARE TRANSFERRED TO AN ENTITY PERMITTED TO OWN SUCH INTERESTS UNDER THE LAWS OF THE UNCLASSIFIED

PAGE 03 STATE 237418

HOST GOVERNMENT.

5. AMOUNTS IN THE LAWFUL CURRENCY OF THE HOST GOVERNMENT AND CREDITS THEREOF ACQUIRED BY THE ISSUING GOVERNMENT UNDER COVERAGE REFERRED TO IN PARAGRAPH 2 OF THIS AGREEMENT SHALL BE ACCORDED TREATMENT NO LESS FAVORABLE THAN THAT ACCORDED TO FUNDS OF NATIONALS OF THE UNITED STATES OF AMERICA DERIVING FROM INVESTMENT ACTIVITIES LIKE THOSE IN WHICH THE INVESTOR HAS BEEN ENGAGED, AND SUCH AMOUNTS AND CREDITS SHALL BE FREELY AVAILABLE TO THE ISSUING GOVERNMENT FOR ITS USE IN THE TERRITORY OF THE HOST GOVERNMENT.

6. (A) DIFFERENCES BETWEEN THE TWO GOVERNMENTS CONVENING THE INTERPRETATION OF THE PROVISIONS OF THIS AGREEMENT SHALL BE RESOLVED, INsofar AS POSSIBLE, THROUGH NEGOTIATIONS BETWEEN THE TWO GOVERNMENTS. IF SUCH A DIFFERENCE CANNOT BE RESOLVED WITHIN A PERIOD OF THREE MONTHS FOLLOWING THE REQUEST FOR SUCH NEGOTIATIONS, IT SHALL BE SUBMITTED, AT THE REQUEST OF EITHER GOVERNMENT, TO AN ARBITRAL TRIBUNAL FOR RESOLUTION IN ACCORDANCE WITH PARAGRAPH 6(C).

(B) ANY CLAIM, ARISING OUT OF ANY INVESTMENT REFERRED TO IN PARAGRAPH 2 OF THIS AGREEMENT, AGAINST EITHER OF THE TWO GOVERNMENTS, WHICH, IN THE OPINION OF THE OTHER, PRESENTS A QUESTION OF PUBLIC INTERNATIONAL LAW SHALL, AT THE REQUEST OF THE GOVERNMENT PRESENTING THE CLAIM, BE SUBMITTED TO NEGOTIATIONS. IF AT THE END OF THREE MONTHS FOLLOWING THE REQUEST FOR NEGOTIATIONS THE TWO GOVERNMENTS HAVE NOT RESOLVED THE CLAIM BY MUTUAL AGREEMENT, THE CLAIM, INCLUDING THE QUESTION OF WHETHER IT PRESENTS A QUESTION OF PUBLIC INTERNATIONAL LAW, SHALL BE SUBMITTED, AT THE REQUEST OF EITHER GOVERNMENT, TO AN ARBITRAL TRIBUNAL FOR RESOLUTION IN ACCORDANCE WITH PARAGRAPH 6(C).

(C) THE ARBITRAL TRIBUNAL FOR RESOLUTION OF DISPUTES PURSUANT TO PARAGRAPHS 6(A) AND 6 (B) SHALL BE ESTABLISHED AND FUNCTION AS FOLLOWS:

(I) EACH GOVERNMENT SHALL APPOINT ONE ARBITRATOR; THESE UNCLASSIFIED

PAGE 04 STATE 237418

TWO ARBITRATORS SHALL DESIGNATE A PRESIDENT BY COMMON AGREEMENT WHO SHALL BE A CITIZEN OF A THIRD STATE AND BE APPOINTED BY THE TWO GOVERNMENTS. THE ARBITRATORS SHALL BE APPOINTED WITHIN TWO MONTHS AND THE PRESIDENT WITHIN THREE MONTHS OF THE DATE OF RECEIPT OF EITHER GOVERNMENT'S REQUEST FOR ARBITRATION. IF THE APPOINTMENTS ARE NOT MADE WITHIN THE FOREGOING TIME LIMITS, EITHER GOVERNMENT MAY, IN THE ABSENCE OF ANY OTHER AGREEMENT, REQUEST THE PRESIDENT OF THE INTERNATIONAL COURT OF JUSTICE TO MAKE THE NECESSARY APPOINTMENT OR APPOINTMENTS, AND BOTH GOVERNMENTS AGREE TO ACCEPT SUCH APPOINTMENT OR APPOINTMENTS.

(II) THE ARBITRAL TRIBUNAL SHALL BASE ITS DECISION ON THE APPLICABLE PRINCIPLES AND RULES OF PUBLIC INTERNATIONAL LAW. THE ARBITRAL TRIBUNAL SHALL DECIDE BY MAJORITY VOTE. ITS DECISION SHALL BE FINAL AND BINDING. ONLY THE TWO GOVERNMENTS MAY REQUEST THE ARBITRAL PROCEDURE AND PARTICIPATE IN IT.

(III) EACH OF THE GOVERNMENTS SHALL PAY THE EXPENSE OF ITS ARBITRATOR AND OF ITS REPRESENTATION IN THE PROCEEDINGS BEFORE THE ARBITRAL TRIBUNAL; THE EXPENSE OF THE

PRESIDENT AND THE OTHER COSTS SHALL BE PAID IN EQUAL PARTS BY THE TWO GOVERNMENTS. THE ARBITRAL TRIBUNAL MAY ADPT REGULATIONS CONCERNING THE COSTS, CONSISTENT WITH THE FOREGOING.

(IV) IN ALL OTHER MATTERS, THE ARBITRAL TRIBUNAL SHALL REGULATE ITS OWN PROCEDURES.

7. THIS AGREEMENT SHALL CONTINUE IN FORCE UNTIL SIX MONTHS FROM THE DATE OF RECEIPT OF A NOTE BY WHICH ONE GOVERNMENT INFORMS THE OTHER OF AN INTENT NO LONGER TO BE A PARTY TO THE AGREEMENT. IN SUCH EVENT, THE PROVISIONS OF THE AGREEMENT WITH RESPECT TO COVERAGE REFERRED TO IN PARAGRAPH 2 WHICH IS ISSUED BEFORE TERMINATION OF THE AGREEMENT SHALL REMAIN IN FORCE FOR THE DURATION OF SUCH COVERAGE, BUT IN NO CASE LONGER THAN TWENTY YEARS AFTER THE DENUNCIATION OF THE AGREEMENT.

8. THIS AGREEMENT SHALL ENTER INTO FORCE ON THE DATE OF THE UNCLASSIFIED

PAGE 05 STATE 237418

NOTE BY WHICH THE HOST GOVERNMENT COMMUNICATES TO THE ISSUING GOVERNMENT THAT THE AGREEMENT HAS BEEN APPROVED IN CONFORMITY WITH THE HOST GOVERNMENT'S CONSTITUTIONAL PROCEDURES.

UPON RECEIPT OF A NOTE FROM YOUR EXCELLENCY INDICATING THAT THE FOREGOING PROVISIONS ARE ACCEPTABLE TO THE GOVERNMENT OF BANGLADESH, THE GOVERNMENT OF THE UNITED STATES OF AMERICA WILL CONSIDER THAT THIS NOTE AND YOUR REPLY THERETO CONSTITUTE AN AGREEMENT BETWEEN OUR TWO GOVERNMENTS ON THIS SUBJECT, THE AGREEMENT TO ENTER INTO FORCE IN ACCORDANCE WITH PARAGRAPH 8.

ACCEPT, EXCELLENCY, THE RENEWED ASSURANCES OF MY HIGHEST CONSIDERATION.
KISSINGER

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